FILED

WALTER	L. WARD),)			Jack C. Silvan or
		Petitioner,)			U. S. D.STRICT COURT
vs.)		76-CR-91-C 78-C-614-C	
UNITED	STATES	OF AMERICA,)	140.	70-C-014-C	
		Respondent.)			

ORDER

Petitioner herein moves this Court pursuant to the provisions of Title 28 U.S.C. § 2255 to vacate the sentence imposed by it upon him or November 3, 1976.

The petitioner was charged by indictment in Case No. 76-CR-91 with a violation of Title 18 U.S.C. § 1014, in that he knowingly made a false statement or willfully overvalued property for the purpose of influencing the action of a federally insured bank on a loan application. Petitioner entered a plea of not guilty to the charge, and was convicted by a jury on September 17, 1976. Petitioner's conviction was affirmed on appeal. United States v. Walter L. Ward, No. 76-2099 (10th Cir., April 6, 1978).

The petitioner's motion is based upon newly discovered evidence. The factual basis for the charge against the petitioner was that he pledged a bonded warehouse receipt for 40 net tons of graphitic shist ore as security on a loan, and alleged that the ore contained \$200,000.00 worth of silver, when it in fact contained only trace amounts of silver. The petitioner has recently had an assay performed on the ore which shows that it should produce approximately \$50,000.00 gross revenue per ton of ore, which would give the 40 tons a value of approximately \$2,000,000.00. The assay report dated October 19, 1978 is the newly discovered evidence upon which the petitioner bases his motion. Exhibit

"B". He contends that this newly discovered evidence demonstrates the truth of the statements made on the loan application.

"Newly discovered evidence, in order to establish a basis for granting a § 2255 motion, must meet the following criteria: it must not have been discoverable with reasonable diligence prior to trial; it must be more than impeaching or cumulative; it must be material to the issues involved; and it must be such as would probably produce an acquittal... Additionally, newly discovered evidence must be credible." Steel v. United States, No. 75-1597 (10th Cir., June 8, 1976) (Citations omitted). See also Franklin v. United States, 428 F.Supp. 1184 (E.D. Okla. 1977).

Petitioner's newly discovered evidence does not meet the requirement that it be material to the issues involved. During the course of petitioner's trial, a substantial amount of testimonial and documentary evidence was introduced to establish the value of the subject ore. Given the substantial increase in the value of precious metals over the past two years, and the probable increase in the efficiency of the technology of extracting those metals, the Court has no doubt that petitioner's ore is worth more today than it was five years ago when petitioner applied for the loan. the other hand, this is exactly why the October 19, 1978 assay report is immaterial. What the ore is worth today proves nothing about the value of the ore in 1973. Furthermore, the truth or falsity of petitioner's representations must be judged in light of the information that was available to him at the time he made those representations. Their truth or falsity cannot be judged retrospectively on the basis of information that is now available to him.

In <u>Steel</u>, <u>supra</u>, the 10th Circuit held that the trial court should have held ar evidentiary hearing to test the credibility of the newly discovered evidence. The court in <u>Franklin</u>, <u>supra</u>, held that it was required to hold an evidentiary hearing based upon <u>Steel</u>. However, the Court sees no need for an evidentiary hearing in the instant case. In

both <u>Steel</u> and <u>Franklin</u>, credibility was an issue. Credibility is not an issue here.

For the foregoing reasons, it is therefore ordered that petitioner's motion to vacate sentence is hereby denied.

It is so Ordered this 30 day of January, 1979.

H. DALE COOK

United States District Judge

JAMES R. CYPHERT, Petitioner, 76-CR-97 vs. UNITED STATES OF AMERICA. To have head Respondent, \$ JAN 2 1979 lactic, strong clark

ORDER

U. S. DISTRICT COURT

Petitioner herein moves this Court pursuant to the provisions of Title 28 U.S.C. § 2255 to vacate the sentence imposed by it upon him on July 10, 1978.

The petitioner was charged by indictment in Case No. 76-CR-97 with a violation of Title 26 U.S.C. § 7212(b), in that he knowingly and intentionally forcibly rescued an automobile seized for collection of delinquent income taxes. Petitioner entered a voluntary plea of guilty to the indictment on June 12, 1978.

As the Court understands the petitioner's motion, he first challenges his sentence on the ground that his conduct did not amount to a crime. He contends that since he was not the delinquent taxpayer, his rescue of the seized automobile was not a violation of Section 7212(b).

It is well-established that when a voluntary plea of guilty has been entered, a sentence is not subject to a Section 2255 collateral attack on the ground that, as a factual matter, the petitioner was not guilty of the offense charged. A Section 2255 motion is not a substitute for direct appeal. See Payton v. United States, 436 F.2d 575 (10th Cir. 1970).

The petitioner also challenges his sentence on the ground that the I.R.S. agents who seized the automobile from him had no authority to do so because he was not the delinquent

taxpayer. He alleges that he was the owner of the automobile, that he had provided the I.R.S. agents proof of his ownership before their seizure of the automobile, and that therefore the agents' failure to secure a warrant to seize the automobile was a violation of the petitioner's Fourth Amendment rights.

A lawful seizure is an essential element that must be alleged and proven when a violation of Section 7212(b) is charged. See United States v. Harris, 521 F.2d 1089 (7th Cir. 1975); <u>United States</u> v. <u>Oliver</u>, 421 F.2d 1034 (10th Cir. 1970); United States v. Scolnik, 392 F.2d 320 (3rd Cir. 1968). So the question of whether the seizure of the petitioner's automobile was lawful or not would be another question relating to the fact of petitioner's guilt, or relating to the sufficiency of the indictment, and would therefore not be a proper ground for a Section 2255 Motion. See Payton v. United States, supra.

For the foregoing reasons, it is therefore ordered that the petitioner's motion to vacate sentence is hereby denied.

It is so Ordered this 23 day of January, 1979.

United States District Judge

UNITED STATES OF AMERICA, Plaintiff, vs. No. 70-CR-52 LUTHER HILL, JR., Defendant.

ORDER

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

I received Plaintiff's exhibits #1 (jar containing a brown powdery substance identified by the numbers 68-636 on bottle) & #2 (one

yellow balloon), introduced at trial. Lerneth P. Sneed HUSA 1-124-79

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

No. 76-CR-98

JAN 17 1979

RANDY LEON MANZER, et al.

RANDY LEON MANZER, et al.,)

Defendant.)

Jack C. Silver, Clerk U. S. DISTRICT COURT

ORDER

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

U.S. DISTRICT JUDGE

Villewied Plaintiffs whilets #

4 - \$100 cash

5 - \$100 cash

9 - scales

10 - Destrone sugar

11 - PDR

16 - Cassille time.

16- Cassille tare Herneth 8-Sindse, A.U.S.A. 1-17-79

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

No. 76-CR-82

JAN 1 7 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

U.S. DISTRICT JUDGE

I received the following Plaintiff's exhibits introduced in the trial held July 19, 21, 22, 23, 426, 1976:

#56, 7+8-all Containing methamphetermine
#5 10 × 11- lab reports (not admitted in trial)

also received the following Plaintiff's exhibits introduced in the trial held nov. 22 + 23, 1976:

#1 8 200.00 Cash

#1 8 200.00 Cash

#4 4 Methamphetermine

#4 4 Methamphetermine

UNITED STATES	OF AMERICA,)		2.48 2.86 2.16	1			
	Plaintiff,)						
vs.)	No. 74-CR-42		JAN	117	1979	}
L.G. DAVIS, et	al.,)					er, Cl	
	Defendant.)		9. 8	s. Ul	S1E	CT CC	JUKI

O R. D E R

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

U.S. DISTRICT JUDGE

Treceived Plaintiff's Exhibit #1 introduced in the trial.

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3/5. TABLETS.

(B)— I BOTTLE MARKED TYLENOL CONTAINING

II TABLETS.

(C)— I BOTTLE MARKED LERITINE ANILERIDINE

CONTAINING A LIQUIP

(D)— I BOTTLE W/ RUBBER BANDS AROUND

IT CONTAINING TWHITE AND TBROWN

PILLS

(C) THE SAME AND THE SAME AROUND

IT CONTAINING TWHITE AND TBROWN

(D)— 1/6 79

UNITED STATES OF AMERICA	,)							
Plaintiff	,)							
vs.)	No.	70-CR-51	S. Lings I made		Tomas en		
ROY MILTON BIRMININGHAM,	et a) (1))			,	JAN	117	1979)
Defendants.		j							
	O R	DEI	R					er, Gl ST GC	

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

Cie E Barnel
U.S. DISTRICT JUDGE

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1-18-77

UNITED	STATES OF AMERICA,)					
	Plaintiff,)	; : sud '		No.	and a	
vs.) No. 70-CR-50		JAN	117	1979)
ROBERT	LEE ALEXANDER, et al.,)				0	
	Defendants.)				er, Cl CT CO	

ORDER

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

Cecen & Bonow U.S. DISTRICT JUDGE

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AND ONE TABLE CONTRINING IT BROKE

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UNITED STATES OF AMERICA,)					
Plaintiff,)		1			
vs.) No	. 70-CR-26	i i	l Kana	<u> </u>	قىدىۋ
ELI ELLIS GILBERT, JR.,)		J	AN 1 7	1979	}
Defendant.	; 			.C. Silv DISTRI		

ORDER

Judgment having been entered in the above case and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the United States Court Clerk return to the respective parties all remaining exhibits in his possession.

aun E. Banan

I received all Plaintiff's exhibits introduced in the trial (all contained in one manila envelope). If $f=-\rho(i)$

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FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 15 1979

United States of America,)	Jack C. Silver, Clerk
v.)	NO. 76-CR-136-B U. S. DISTRICT COURT
RONALD EDWARD WEEKS	;	REVOCATION OF PROBATION

On November 23, 1976, came the attorney for the Government and the defendant appeared in person and by counsel, Gary M. McSpadden,

IT WAS ADJUDGED that the defendant, upon his plea of guilty had been convicted of having violated Title 18, U.S.C., Section 371, as charged in the Indictment.

IT WAS ADJUDGED that the defendant was guilty as charged and he was convicted.

IT WAS ADJUDGED that the defendant was committed to the custody of the Attorney General for a period of sixty (60) months on the condition that the defendant be confined in a jail-type institution for a period of six (6) months, the execution of the remainder of the sentence of imprisonment suspended and the defendant placed on probation for fifty-four (54) months. The condition of probation was that the defendant make restitution in the amount of \$960.00 to the Court Clerk in payments of \$20.00 a month, beginning the first month after release from the institution.

On the 11th day of January, 1979, came the attorney for the Government, and the defendant appeared in person and with counsel Barry Heaver. It being shown to the Court that the defendant had violated the terms and conditions of said probation,

IT WAS ADJUDGED that the Order for probation entered November 23, 1976, be revoked and set aside, and final disposition was continued to 10:00 a.m. the 12th day of January, 1979.

Now, on this 15th day of January, 1979, the defendant showing to the Court that he has made full restitution, the Court finds that probation should be and it is hereby reinstated and extended for one (1) additional year.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

of America vs.	U	nited first	es District Court fo
RUDOLPH J. DONATI	I, JR.	NORTHERN DI	STRICT OF OKLAHOMA
/			77-CR-75
JUDGMENT AN	D PROBATION	N/COMMITMI	ENT ORDER A0-245 (5/75)
		-	MONTH DAY YEAR 1 12 79
WITHOUT COUNSEL	have counsel appointed by the	court and the defendant the	reupon waived assistance of counsel. urt Appointed
		I NOLO CONTENDER	·
There being a finding that the tof	NOT GUILTY.	Defendant is discharged	Jack C. Silver, Clerk U. S. DISTRICT COURT
		•	
The imposition is placed on probati from this date.	n of sentence is ion for a period	hereby suspen l of Three and	ded and the defendant one-half (3 1/2) Years
is to follow an alco	phol treatment p	enditions of program as dire	obation, the defendant cted and counseled by
any time during the probation period	osed. The Court may change the	e conditions of probation, red	fuce or extend the period of probation, and at
The court orders commitment to	the custody of the Attorne	ey General and recommen	It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.
			CERTIFIED AS A TRUE COPY ON
	(book)		THIS DATE
	Date	1-12-79	() CLERK () DEPUTY
	RUDOLPH J. DONAT: JUDGMENT AN In the presence of the attorney the defendant appeared in personal without counsel. WITHOUT COUNSEL WITH COUNSEL WITH count be a factual basis for there is a factual basis for the present the country as a factual basis for the probation of the country as a factual basis for the probation probation period is placed on probation probation for a violation occurring defends the probation period probation for a violation occurring defends the probation period probation for a violation occurring defends the probation period probation for a violation occurring defends the probation period probation for a violation occurring defends the probation period per	In the presence of the attorney for the government the defendant appeared in person on this date WITHOUT COUNSEL WITH COUNSEL WITH COUNSEL WITH COUNSEL Charle La GUILTY, and the court being satisfied that there is a factual basis for the plea, There being a finding satisfied of La GUILTY. Defendant has been convicted as charged of the offense(s) or Section 5861(d) and Section 5871, The court asked whether defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or appeared to the court, the court adjudged the defendant had anything to say why judg was shown, or a	RUDOLPH J. DONATI, JR. JUDGMENT AND PROBATION/COMMITM In the presence of the attorney for the government the defendant appeared in person on this date JWITHOUT COUNSEL However the court advised defendant of right to cour have counsel appointed by the court and the defendant the LX_JWITH COUNSEL Charles H. Froeb, CO (Name of counsel there is a factual basis for the plea, There being a finding present of LX_J GUILTY. Defendant is discharged LX_J GUILTY. Defendant is discharged LX_J GUILTY. Defendant is discharged in NOT GUILTY. Defendant is discharged in Section 5861(d) and Section 5871, as charged in Section 5861(d) and Section 5871, as charged in the court addidged the defendant guilty as charged and CANAXAXAXAXAXAXAXAXAXAXAXAXAXAXAXAXAXAXA

United States	of America vs. United S	s District Court fo
DEFENDANT	NORTHERN DIS	STRICT OF OKLAHOMA
	PATRICIA MAE ABERCROMBIE:	78-CR-137-B
	JUDGMENT AND PROBATION/COMMITME	NT ORDER A0-245 (5/75)
	In the presence of the attorney for the government the defendant appeared in person on this date	MONTH DAY YEAR 1 11 79
COUNSEL	WITHOUT COUNSEL However the court advised defendant of right to counse have counsel appointed by the court and the defendant there X WITH COUNSEL CURTIS PARKS Ret.	upon waived assistance of counsel.
PLEA	(Name of counsel) **Example 1.5	NOT GUILTY
	There being a finding/*****of WOT GUILTY. Defendant is discharged GUILTY.	Jack C. Silver, Clerk U. S. DISTRICT COURT
FINDING &	Defendant has been convicted as charged of the offense(s) of having violat Section 556, as charged in the Information.	ed Title 18, U.S.C.,
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OR PROBATION ORDER SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS OF PROBATION COMMITMENT RECOMMEN-	In addition to the special conditions of probation imposed above, it is hereby ordered that the geneverse side of this judgment be imposation for a violation period of five years permit probation for a violation occurring during the probation for a violation occurring during the probation period. The court orders commitment to the custody of the Attorney General and recommends	neral conditions of probation set out on the ce or extend the period of probation, and at ted by law, may issue a warrant and revoke It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

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FENDANT	BETTY JEAN WEBB		DOCKET NO.	78-CR-1	24-B
	JUDGMENT AN	D PROBATION			
	In the presence of the attorney f the defendant appeared in person			MONTH 1	DAY 1
OUNSEL	-	However the court advised have counsel appointed by the an N. Eden, App	court and the defendant the	ereupon waived assista	
PLEA	GUILTY, and the court be			RE, NOT	r GUILTY
	there is a factual basis for t		Defendant is discharged	ſ	JAN 1 1 1
	There being a finding/	NOT GUILTY.	-	Jac U. S	k C. Silver, Cle . DISTRICT CO
NDING &	Defendant has been convicted as Sections 1798 and Indictment.	charged of the offense(s) c 495, as charged	having viole in Counts 1,2	rted Title	18, U.S.C. f the
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ENTENCE OR IOBATION ORDER	The court asked whether defendant was shown, or appeared to the couhereby committed to the custody of Count 1 - Eighteen Counts 2,3,4 & 5 - defendant is place to each count, upon run concurrently to	rt, the court adjudged the defi the Attorney General or his au (18) months. The imposition and on probation on release from	endant guilty as charged and thorized representative for in of sentence if for a period of incarceration.	d convicted and order mprisonment for a pe	red that: The defen riod of d and the years as
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	JOSE DONOVAN VALLE			78-CR-13		 -
	JUDGMENT AN	D PROBAT	FION/COMMITM	ENT ORDI	ER A0-24	45 (5/75)
	In the presence of the attorney f the defendant appeared in person			MONTH 1	BAY	YEAR 7 9
COUNSEL	WITHOUT COUNSEL WITH COUNSEL RO		advised defendant of right to colled by the court and the defendant the court and the defendant the court and the	nereupon waived assista		
PLEA	GUILTY, and the court be there is a factual basis for		NOLO CONTENDE	RE, NOT	JAN 8 19	79
	There being a finding	NOT GUILT	UILTY. Defendant is discharged	d Jac U.S	k C. Silver, DISTRICT (Clerk COURT
FINDING &	Defendant has been convicted as Section 1324 (a) (2)	charged of the offe	ense(s) of having violation the Indictment	eted Title 8 at.	0.s.c.	• • •
UDGMENT						1
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JAN 51979

IN THE UNITED STATES DISTRICT COURT FOR THE Jack C. Silver, Clerk NORTHERN DISTRICT OF OKLAHOMA

U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

NO. 78-CR-110-B

VERNON JOHN LANE, et al.,

v.

Defendants.

ORDER

The Court has for consideration a motion pursuant to Rule 35, Federal Rules of Criminal Procedure, seeking modification of the sentence of Vernon John Lane, timely filed by counsel on Defendant's behalf.

Having carefully studied the motion, reviewed the file, and reflected on the sentence imposed December 14, 1978, the Court, being fully advised in the premises, finds that the motion should be granted and the sentence modified. Although the original sentence was pursuant to the Youth Corrections Act, 18 U.S.C. § 5010(b), as a young adult offender within the purview of 18 U.S.C. § 4216, under the circumstances now known to the Court, he will not derive maximum benefit from treatment under 18 U.S.C. § 5010(b).

IT IS, THEREFORE, ORDERED that the Judgment and Sentence against Vernon John Lane entered herein on December 14, 1978, be and it is hereby modified to the following:

The Defendant, Vernon John Lane, is hereby committed to the custody of the Attorney General or his authorized representative for a period of two (2) years, regular adult sentence, and it is recommended that said sentence shall run concurrently with the sentence imposed December 27, 1978, in Case No. CRF-78-2882, by the District Court of Tulsa County, Oklahoma. Dated this 5th day of January, 1979, at Tulsa, Oklahoma.

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 51979 LO.

IN THE UNITED STATES DISTRICT COURT FOR THE Jack C. Silver, Clark

U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

v.

NO. 78-CR-120-В

SALLY FAY BURCH GARDNER,

Defendant.

Plaintiff,

ORDER

The Court has for consideration a motion pursuant to Rule 35, Federal Rules of Criminal Procedure, timely filed by counsel on behalf of the Defendant, Sally Fay Burch Gardner.

Having studied the motion, carefully reviewed the file, and reflected on the sentence, the Court, being fully advised in the premises, finds that under the circumstances before the Court the sentence imposed was lenient and proper. The motion for modification of sentence should be denied.

IT IS, THEREFORE, ORDERED that the motion for discretionary modification of the sentence of Sally Fay Burch Gardner be and it is hereby overruled.

Dated this 54 day of January, 1979, at Tulsa, Oklahoma.

COURT FOR THE NORTHERN DISTRICT OF

OKLAHOMA